

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Friday, July 16, 2004 – 12:00 p.m.
Arizona State Fairgrounds – Wildlife Bldg
17th Avenue & McDowell Road
Phoenix, Arizona

PRESENT – On Site: (Commission)

(Director's Staff)

Commissioner Hays Gilstrap

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Assistant. A.G. Jim Odenkirk

PRESENT – Phone

Chairman Sue Chilton

Commissioner Joe Melton

Commissioner Michael M. Golightly

Commissioner William H. McLean

Chairman Chilton called the meeting to order at 12:06 p.m. She gave gavel to Commissioner Gilstrap since he was present on site. The meeting followed an agenda dated July 15, 2004 for a special meeting of the Commission. Roll call was taken of commissioners and all commissioners were present. Other Department staff present were Dana Yost, Executive Staff Assistant; Harry Seck, Information Branch Chief; Chuck Emmert, Audio-Visual Branch Chief; Linda Melker, System and Programs Manager; Rory Aikens, Public Information Officer; and Mike Senn, Assistant Director FOD. Director Duane Shroufe gave a brief overview per Commissioner Gilstrap's request. We are dealing with an agenda dated July 15, telephone conference call. All commissioners are present and what we are going to do today is discuss the options for processing applications affected by R12-4-114(E) to comply with July 13, 2004 U.S. District Court order in the matter of *Montoya vs. Manning*. I am going to ask the audience if you wish to address the Commission this afternoon, please fill out a blue slip so the Chair can announce your name, give you a chance to speak, and we have your name for the record. Here's how we are going to operate because there are so many people here today, we are going to ask Assistant Attorney General, Jim Odenkirk to set the stage. Because there are so many in the audience, so many blue slips, and it is hot outside, we're going to give everyone the opportunity to speak to the Commission before we go into Executive Session. So, we will do that to hear each one of you, and then when that is finished, we will ask the Commission to go into Executive Session to discuss this issue. Mr. Odenkirk, would you please set the stage.

Jim Odenkirk started with thanking Director Shroufe. I will start with decision that we received on Wednesday, July 14 from the District Court. The order of the Court was to find that our regulation that imposes a limit on the number of permits available for nonresidents is unconstitutional. In light of the Court's finding that the regulation is unconstitutional, the Court also imposed a permanent injunction on our enforcement of that rule. We, obviously, did not have advance warning as to when this decision would be made available. That information is only within the knowledge of the District Court Judge. The decision came out at a time that was very inopportune for the Agency because the Agency was right in the middle of trying to process over 270,000 applications for the big game draw this fall. We had not completed that process when we received the order. Realizing that we were now under a permanent injunction by the

court not to limit the number of nonresident applicants, it was time that we had to immediately look at options to complete the draw process and do it in a timely fashion so that permits would be available for hunters this fall. First season begins August 6 so we are certainly under a very difficult time limitation to comply with the Court's order. Along with looking at different options, which is the reason why the Commission is going to meet today, we immediately scheduled a Commission meeting, which requires 24 hours notice at a minimum to schedule a meeting of the Commission. At the same time the Attorney General's office proceeded to file a motion with the District Court asking the Court to grant us temporary relief from the injunction to allow us to complete the draw process as we had started and to re-impose the injunction after this year's draw. Those documents were filed yesterday and along with that motion we filed a motion for expedited ruling. Given that we need to have relief from this injunction immediately, we need the court to respond as soon as possible to our motion. Those documents have been filed. We are waiting for a response from the Court. So, again, we are here today to talk to the Commission about options that they might have available to comply with the Court's order and to complete the draw process in a timely fashion. There will need to be an Executive Session in which the Commission obtains legal advice on this issue, but I believe at the outset the Commission would like to hear from the public and at this point, I will turn it back to Vice Chairman Gilstrap.

Commissioner Gilstrap thanked Mr. Odenkirk and Director Shroufe. Just for the benefit of the other four Commissioners he is sitting in typical position that we do at Commission meetings; however there is approximately 120 eager participants out here and there are probably about 20-30 blue slips. To follow up with Jim Odenkirk, the Commission is limited in its opportunity for the decision as a result of the Judge's and Court's decisions. We have to work within the sideboards and parameters of that decision. We can look at a lot of alternatives over a period of time, but for now we can only look at those alternatives that are available to us as a result of the decision that was made a couple of days ago. Before we start the blue slips, are there any Commissioners like to make a statement? Hearing none, are you okay to start with the blue slips. Commissioners agreed.

Public comment:

Larry Hershowitz: Resides in Wickenburg, AZ. Far as I am concerned, the fall draw was completed at the deadline of us turning in our applications and should be taken into account for this draw of 2004.

Commissioner Gilstrap as many of you know, in this type of setting we cannot have dialog with the public. We can have dialog with members of the Commission, so if any Commissioner hears something at any time that you would like to ask one of the speakers, please interrupt me or let me know so that you can have the opportunity to ask a question.

Chairman Chilton suggested that Commissioner Gilstrap call out some names and have people line up so ready to go when it is their turn.

Jake Giles: Resides in Phoenix, AZ and represents ADA. When is draw going to be completed or is company still working on it. When will we be able to buy names? When will we be able to get the information from Game and Fish and when is the draw going to be completed?

Commissioner Gilstrap: I understand first question, you said last year you had to go to Commission to be able to buy names of hunters to send them information. We did not change the rule.

Mr. Giles: When will draw be complete?

Commissioner Gilstrap: Correct me if not correct, but I think that is yet to be determined. At the end of this meeting we will be better answer to that question.

Mr. Giles: it's not going to be like November or December, it's going to be hopefully before the archery season?

Commissioner Gilstrap: yes, hopefully the draw will be before the season is over.

William Kurnik: did not come forward

Kevin Harris: resides in Phoenix, AZ and I represent myself and Az Deer Assoc. I guess, speaking for myself, just want to say I am very disappointed in it getting to this point. From all I understood, there were ways to get around this, and that this decision, the Department knew it was going to lose this decision for probably quite a while. I may be wrong. The other thing I would like to say is I am disappointed in the way the draw has come about. Think Game and Fish Department has lost, they are losing their constituency, which is us, the AZ residents. This online draw process with the \$5 fee, which all online applicants are charged, whereas the other hunters who mail in application or deliver it in person are required to upfront whole permit amount. I am just disappointed.

Commissioner Gilstrap: the points you make are certainly of interest to the Commission and they are ongoing, but if we can stay today focused on where we are in this court decision, and at different time and setting, will talk about other frustrations, but need to stay focused on court decision and where we are.

Mr. Harris: replied okay, I appreciate that and as a member board of the Deer Association I just to say that we support the Department on lots of issues, so not here to just rail on you, just am expressing own personal opinion.

Dick King: resides in Phoenix, AZ and represents ABA. Would like to say that I was hoping that you would do your thing first because I really don't have a whole lot to say. Have been involved, tried to listen for the last several months to presentations by Steve Ferrell and I, too, as I am sure you are also, disappointed with the decision that has come about and at the timing it has come about, but I for one think you guys have worked pretty hard at trying to get this thing resolved in a manner that would be favorable to the residents of Arizona. I am disappointed that it's not the way it is. At this time I am anxious to see what is going to happen and I really don't have a whole lot to say. Will we be able to hear comment after Executive Session?

Commissioner Gilstrap: replied yes and will try to keep Executive Session as brief as possible because of the temperature outside.

Tony Widdizon: resides in Mesa, AZ. My main concern is I think that this is an Arizona resource that should be used by Arizonans, we are ones who pay taxes. It is not just the fees of

the tags and think that Arizona should be considered first and keep it for us. If we can open it for them, I think they sort of stabbed themselves in the foot with this one, because we are ones that manage it, it should be for us, we pay the salaries of the people. Commissioner Gilstrap replied so that there is no misunderstanding, speaking for the Commission, I don't think there is anyone on Commission or Department that is not extremely disappointed with this decision. It is the last thing we wanted to have happen.

John Koleszar: resident of Gilbert, AZ and representing Arizona Elk Society. We talked to our board members last night. One of things that we are encouraging the Commission to do is to try and begin the habitat bonus point structure prior to 2006, start in 2005 instead. Perhaps have first, second, and third years staggered where 3 points for first year, 2 for the second, and 1 for the third year. Would put a structure where the residents of Arizona who work in any form of projects would be granted those permanent bonus points and would put them well ahead of the loop of other people. Second item, was to take a look at the equal percentages law, when make decision today, roughly one out of 1000 get drawn. If apply same percentages to out-of-state hunters, have two draws, one for the out of state and one for instate. But apply the same sets of regulations, roughly the same statistics. If we did one out of 1000 on the early season bull hunts as well as the rifle hunts, which would be 15 out-of-state bull tags for early season hunts out of the 240 tags that are awarded. That is less than the 10%, which would make some sense. We need to study those statistics. Third, we are recommending that you proceed with some form of appeal since there is a disparity of opinion between the 9th and 10th Circuit Courts. We recognize that there is no mandate the Supreme Court has to look at it, but when we have two different opinions, and effecting all the western states on the same issue, that's perhaps something they will look at. Thank you.

John Nevins: reside in Phoenix, AZ and owner of 4-Peaks. Just listening from what you have to say about the 9th Circuit Court, it sounds like Department dropped ball on this, it came out of nowhere on you. There was no one down there representing AZ?

Commissioner Gilstrap said this is an appeal. Nobody was there when judge made decision.

Jim Odenkirk: Let me make it clear about what I meant when I said that the decision was at a time when we didn't expect it. We had filed all the documents and arguments before the judge back in January and the judge had everything to review the case, but up to judge's own calendar and own caseload as to when he gets around to deciding the case. We have no idea when that is going to happen. It could have happened four months ago, happened as it did, or it could happen four months into the future. That's the point I was trying to make. It came at time when we had no control over the matter and, certainly, at a time that was most inopportune.

Rod Horn: resides in Waddell, AZ. What he wanted to say was already said.

Glen Sheldon: resides in Phoenix, AZ and represents Wild West Archery Inc. Chairman, Commissioners, good afternoon and a hot one that it is. I have some questions as I am representing Wild West Archery, as my business depends on when this drawing comes out. From the time this draw is put out to the day of said hunt is when I make all my revenue. I am not a million dollar business, but there are many businesses like myself. My question is if we stall this draw, how long is it going to take to restart this draw. Every day matters to me. This money generated in this time period keeps my business afloat. I am looking at travesty, devastation to my business. There are many businesses like myself and I need to have this

answered. I understand Jim is still tied up in court and waiting for an answer. I have taken on legal counsel myself to also look at what's going on from the Supreme Court bouncing it all over the place. I need this answer, can I have an answer? Any guestimation? If you had to redraw, what would the time frame be?

Commissioner Gilstrap: if we decide today to go through the draw, which would be limited only to those appropriate units, is there an estimate of time?

Director Shroufe: to offer a suggestion now and come back after we've looked at the options after Executive Session, I think that would be inappropriate. So, to answer your question, there may be an answer to that question this afternoon, depending on the action that the Commission wants to take. I don't know what that action is right now.

Mr. Sheldon: one of my suggestions for action is forget what the decision is. This is the state of Arizona. Let me ask you Jim, if we forget the decision, that was made by Broomfield and we proceed with our actions that we have already gone through, what would be the ramifications?

Mr. Odenkirk: what would happen is that there would be a petition filed for contempt of court and court would have to decide whether disregarding the opinion warrants some kind of sanctions, such as fines or even jail.

Mr. Sheldon: I really want to see an answer today on this as my livelihood is at stake. Would like Mr. Odenkirk going to Broomfield and telling and showing him what the economical ramifications of what this is going to do the state of Arizona and the trickle down affect. The study done two years ago at ASU by a professor, which I read in your magazine, was worth \$480,000,000 per year. Every day is costing the state of Arizona, why can't we go to him and show impact of what's going to happen on this delayed decision. This is money. Montoya is all about money. Taulman is about money. I'm about money, etc. Can we go to Broomfield and ask him for some type of order to delay this until next year?

Commissioner Gilstrap: I think we are all in sympathy and understand what you're saying. As Assistant Attorney General Odenkirk mentioned, there is a motion before the judge now for relief. I don't think the Commission would entertain the option of breaking the law.

Mr. Sheldon: is that motion considering the economics?

Mr. Odenkirk: what we have asked the court is to lift the injunction so that we can complete the draw this year, so that we can continue to process it as if the court order never happened and then deal with the injunction after this draw. We filed that yesterday, we asked the court to make an expedited rule on it as soon as you get it, but now out of our control and court is going to have to decide whether it has merit.

Chairman Chilton: I would like to respond to the last speaker a bit. We are extremely aligned with your concerns and we are frustrated out of our brains here, but the issue we are dealing with, is not a matter of convincing Judge Broomfield that there is economic hardship to our state, which there is, you are absolutely right. The bigger issue is that we have about 10-20 years of overbroad interpretation by the Supreme Court of the commerce clause of the Constitution. They are applying the restriction that is in the Constitution against states raising any barriers to interstate commerce and they are applying the term interstate commerce in an ever broader

fashion and the constant broadening of federal power over the state power has caught us in this net. We are in position where need to let our legislators, congressional delegation know that the commerce clause of the Constitution has been stretched out of all possible resemblance to what it was supposed to be when Constitution was written. That's the message that we can send to our delegation, but our local District Court feels obliged to follow constitutional law as interpreted by the 9th Circuit. Judge Broomfield doesn't have a lot of choice and we don't have any choice. It's a nation of laws and we are following the laws, even though in this case we believe that the interpretation of that clause is absolutely inappropriate and most harmful to citizens of Arizona.

Commissioner Gilstrap stated for members of Commission, be aware as we utilize one blue slip we are receiving another so we are not gaining ground, but still have some enthusiastic speakers.

Terry Petko: resides in Mesa, AZ. Thanks for the opportunity to allow the public to speak at today's meeting. After I heard about the court decision yesterday, I called Mr. Talbot and see what his views were, and get a feel for what his thinking is on this. He is a man with no respect for the heritage of hunting, no respect for the recreational value that hunting brings. I am not a business man, I don't pull in any money from hunting. Hunting is a way of life from time I was a kid. It is my heritage, recreational activity to me and is not a commercial pursuit. This was basically spearheaded by interstate commerce statute and regulations. Correct me if I'm wrong, but I understand that is because of the fact that we allow the sale of antlers and hides in Arizona. If that is the only loophole that they are utilizing to get us underneath this interstate commerce statute, I would sure like to encourage you folks to change it. Pursue to get that out of our laws so we won't be affected so that we govern our own program here and not the feds.

Commissioner Gilstrap: just to clarify, that is the sale of hides and horns is one factor, but not the exclusive factor, it was also the trade, housing, food, gasoline, etc. was also considered a part of commerce.

Dennis Cash: resides in Goodyear, AZ and represents himself and John Q public. Given what last person said about the heritage of hunting, that I believe is probably what most of these people are here for. I don't know what your options are at this point, but I would like to suggest a few. One, limit number of outfitter clients that are available, outfitter client tags that are available in the state. The gentleman from the Elk Society had a fine idea, do same percentage. But, once again, you are limiting, is that also part of the problem? Biggest problem I can see here is we have so many people in Arizona that want to hunt and under this decision won't be able to now. Believe the revenue string for Commission or Department will be drastically affected. Now, I don't know if that is the case or not, but common sense tells me it is. If as a resident, I have no edge in draw for Arizona over out-of-staters, why bother? That's my attitude. Because I went through a 12-year stretch where I didn't draw an elk tag. Seven years into that, I toured the area I normally hunt. 21 out of 28 camps were out of staters. That was back in the 90s. I have a problem with that and now it's going to get worse. One question, what are your options? What do we do now?

Commissioner Gilstrap: he would take that as a rhetorical question for the moment, because as we go through this, we will discuss a litany of options.

Mr. Cash: will we hear your options or will you do this in Executive Session?

Commissioner Gilstrap: both, we will have public session before we go into Executive Session where discuss and have public session after we come out of Executive Session.. Only going to Executive Session because we are dealing with a court ruling that we have to get legal advice on what we can and cannot do.

David Giles: resides in Phoenix AZ. I have been hunting in this state for over 40 years, this news is such a big load of hoey. I am very disappointed in the federal system. I hope Arizona sovereignty wins out. However, I would like to see and would like to suggest that Commission if this is shoved down our throats, then really jack up the rates on these carpetbaggers coming in wanting to hunt in our state. If they want to drag us to court and make us pay and take money out of our game system, I think they should be made to pay, \$5000-\$6000 a shot, whatever it takes. Thank you.

Danny Cline: resides in Prescott, AZ. I am a native of this state and in all the years, I have only been drawn five times. I go ahead and put up with it, just like everyone else does. I think the problem with this, is there is a gentleman to whom the only thing he is worried about is money in his pocket and I do agree with the cap. Thank you.

Steve Hopkins: resides in Tucson, AZ and represent Southern AZ Sportsmens' Alliance. I am a life member of the RMEF, the Mule Deer Foundation, National Wild Turkey Federation and NRA. I am currently a member of the committee in Tucson called the So. AZ Sportsmens' Alliance. I have given countless hours to wildlife conservation over the last ten years, have raised money, and gave my time to work on projects in field along with my family. We do this in an effort to give something back. We don't believe you can constantly take from something and not give something back. This is why we do it. Thus ruling hurts us so much because we have given time and money to improve the wildlife and the wildlife habitat for the residents of our state, not the nonresidents. They give nothing. Also want to pass on legacy to children. On behalf of the sportsmen of southern Arizona, we are asking Commission to vote immediately for an appeal to the Supreme Court and release the current draw results in defiance of the judge's ruling. There are contradictory rulings between the 9th and 10th circuit courts. Arizona sportsmen are outraged at the Game and Fish that allowed the Assistant Attorney General's office not to supply this matter with more competent legal counsel than it did. Also, for not keeping its constituents more informed of what was happening in this matter. We are also asking that you immediately advise your legal team to go back to Judge Broomfield and request a stay at this time to protect the integrity of already completed draw results. Also, it will allow AZ Sportsmen a cool down period in which time your staff can figure out a solution to this travesty. I need to inform this Commission that Arizona residents and hunters are furious over the matter and many have already started making threatening statements towards nonresident guides and outfitters. So part of the decision must have regards to public safety because this has opened up Pandora's box. At very least, I would like to believe that our judicial system is not so screwed up that it would not allow latitude to negotiate the execution of an order, and allow a more amicable remedy to be phased in over the next year's process. Demand is going to be made to turn over current draw results in conjunction with Public Information Act and a possible class action suit against the Department may be made. These are not my own words, but things I have heard. I would also like to recommend that the price of tags be jumped up to at least \$20,000. The White Mountain Apache Indian Reservation has already proved that the market will bear that on a nonresident tag. The San Carlos Apaches get \$40,000 for their elk tags. So if nonresidents want to come here to hunt our trophy bulls that most of the people in this room worked so hard to get that way, being the conservation groups and the Department, then nonresidents should have to

pay a premium price. In closing, the sportsmen hunters of this state do not envy your situation and hope and pray you can come up with a more of a win-win scenario for your residents. After all, they are the ones doing the work with you out in the field.

Commissioner Gilstrap: asked if any Commissioners wished to respond or make observations.

Chairman Chilton: would like to ask Jim Odenkirk, it seems to me like the Indian nations have broader latitude to charge those higher fees because they are actually a different, sovereign territory, but if we were to impose a fee like \$20,000 for out of state, would that be regarded a barrier to interstate commerce?

Mr. Odenkirk: what the court has said in this area is that disparity in fees or differences in fees between resident and nonresident is acceptable, but cannot be unreasonable. That's the direction that courts have given, so where we set those fees will be subject to some scrutiny if they are changed.

Commissioner Gilstrap: made an observation that although this ruling is an Arizona case, it is not unique to Arizona; most states have a stake in this decision. We are not the only state that this decision has ramifications for. It is throughout the nation.

Mr. Odenkirk: the state of Minnesota has already sued the state of North Dakota over this precise issue of fees. Minnesota is alleging that the difference in fees violates the commerce clause, so it is an issue out there that we are going to be watching as well.

Paul Rippey: resides in Waddell, AZ. Do we have legal counsel?

Commissioner Gilstrap: we do have legal counsel.

Mr. Rippey: Should we use OJ's counsel? Do we need to go that far? I believe that we should and must make out of state people trying to get tags from this state complete an Arizona hunter education course, make hard as possible for them, and require them to use a guide. Everything else that has been said I concur with.

Ron Peoples: resides in Phoenix, AZ and representing Phoenix Varmint Callers Inc. Primarily we hunt coyotes, but this also affects us because we also put in for big game. In talking with the president of the Varmint Callers, we are in favor of higher fees. Something else to consider is a nonrefundable application fee. Someone threw out \$500, but I don't think that's quite high enough. Something else we need to consider is possibly only allowing Arizona residents to guide within the state of Arizona. That would cut down outside pressure. It is our goal and intention to protect the right of hunting for residents of this state. Need to support Commission on their decisions, but we need to have input with that and we appreciate that.

Commissioner Gilstrap: anyone would certainly have an opportunity for input.

Chuck Decker: resides in Phoenix, AZ. Thank you Commissioners. I had a question after the Executive Session, will we have another session this afternoon with results?

Commissioner Gilstrap: replied yes.

Mr. Decker: Another question that I had is I would assume that the draw was already completed when this decision came down?

Deputy Director Ferrell: we have the results of the draw as far as who the successful hunters will be, but wasn't completed yet because there was far more to do than just downloading results. We had to still do the financials on the draw, which is rather complicated with several databases that were not yet completed.

Mr. Decker: never mind whose credit card got charged, or whose money would have got cashed, but was the draw of who is going and who is not, was that completed by the time the ruling came down?

Deputy Director Ferrell: yes, that part was completed.

Mr. Decker: another concern that I have with this whole litigation is I notice that he is concerned only with deer and elk, but we have other species in this state, which while they don't draw the interest of elk, they do have value. Why were they not included in this decision/lawsuit?

Mr. Odenkirk: speculated it was an oversight on part of plaintiffs. The effect of the rule is that any regulation that limits the number of permits to nonresidents is unconstitutional. The injunction only applies to elk and deer, but the ruling is essentially that any regulation of that nature is unconstitutional.

Mr. Decker said there are some other states that do not allow any nonresidents to hunt in their state, and these states seem to be able to get away with this, or, they are doing it. Why do we have this problem? Some states in the Midwest, maybe Oklahoma, that do not allow nonresidents to hunt and they are able to do this. Is that some type of precedent?

Commissioner Gilstrap: that is exactly what predicated the state filing a suit against South Dakota for their pheasant hunt where nonresidents were not able to apply. That has yet to be determined.

Mr. Decker: some people brought up excellent points previously, one of mine was guides be Arizona residents, required hunter education course to apply for draw.

Greg Neely: resides in Scottsdale, AZ. I have question for Mr. Odenkirk. This process as I understand it, started in the year 2000. When it was initially filed, there was a ruling that was sent to the appellate court and sent back to a federal judge here where a decision was recently made this week. It might help the Commission, and certainly all the people in this room, including myself that aren't aware of all the details, how did the process get this far? Why is it other states are able to apply some form of a cap? And, what did we do incorrectly to get us to the point where we are at?

Mr. Odenkirk: one of the unfortunate things about Arizona is that we were first on somebody's list. A plaintiff selected Arizona as a test case. Other states that have similar regulations will be facing similar lawsuits in light of the 9th Circuit's decision. You are correct, this case does go back a number of years. We were successful initially in the district court on the commerce clause issue. It was appealed to 9th Circuit, and 9th Circuit reversed. In reversing the case, the court sent it back to the district court, asking the court to undertake an additional process of

gathering more evidence and allowing the parties to submit additional arguments as to whether or not 10% cap is unconstitutional. We have been involved in that process for over a year now and that has culminated in the decision today. In talking with folks around the country, they realize that Arizona is ahead of the curve on this matter because they were sued first. But every other state, and especially those states that are in the 9th Circuit, are scared they are going to be sued any day over similar regulations. In fact, the state of Nevada is likely to be sued next. They have been threatened with a lawsuit for some time now and the belief is that they will be sued next. Every state in 9th Circuit is subject to this decision and it's a very difficult burden to overcome once the 9th Circuit has found that these regulations impact interstate commerce. Plaintiffs are in a strong position until the Supreme Court eventually takes the case and provides some definitive guidance on this legal issue. Now, there has been reference to a 10th Circuit case in Wyoming, there is a case on appeal, but at this point I am unaware of any decision that the 10th Circuit has made on this commerce clause issue. If the 10th Circuit rules in a manner opposite to the way the 9th Circuit ruled, then what you have is a situation where two different circuits are in conflict. That sets it up much better for the Supreme Court to possibly take an appeal of the 10th Circuit case to resolve the conflict. With our case, when the 9th Circuit issued its opinion, we tried to get the Supreme Court to take the case and when the Supreme Court is faced with accepting less than 100 cases a year, but they get over 4,000 petitions, it was a matter of low odds that the court would take our case. And the court did not take the case, but if we can create a conflict in the circuits and, hopefully get the Supreme Court to take this case and reverse the 9th Circuit, then we'll be in a position where we can regulate nonresidents again.

Mr. Neely: as it pertains to let's say a constitutional issue, I know there is a clause in the Constitution where the states are able to regulate themselves. Is it your understanding through this ruling that this judge has decided that the commerce issues are more compelling than states rights?

Mr. Odenkirk said that is correct. The federal commerce clause takes precedence over individual states rights.

Commissioner Gilstrap: added that Jim was very succinct in his chronology of what happened. I just wanted to be sure that included in that description was mention of when the 9th Circuit made its decision, we immediately went about the process and the expense in appealing to the Supreme Court and they didn't take the case.

David Myrick: resides in Phoenix, AZ and represents self and Desert Christian Archers club. Just wanted to comment on few things. I don't think there is a single person here that is happy with the decision that has been made. I do not envy the Commission or the Game and Fish Department right now, but overall, I think the Department does an excellent job. One of the things that I would like to see, obviously, this 10% cap does not apply to all of our hunts. It actually applies to not even a majority of them. If you guys could post the information as soon as possible for the hunts that this does not apply to, we would appreciate that. Another comment is I think that there is little misunderstanding with a lot of people about what is going on, not necessarily the resident vs. nonresidents. It is more or less an outfitter trying to make money on it and I feel that increasing the price of tags significantly, this outfitter has the type of clients that can pay for these tags. It's going to be the people that lose out, the nonresidents that have been putting in for 10 years that don't have a lot of money. Just wealthy nonresident hunters are going to get all the tags because they can afford it. Is there going to be time for comment after the Game and Fish Commission gives the recommendations, will we be able to comment on it? I

am sure there are alternatives made because you guys knew that this was possibly coming, can we speak on behalf of what alternatives are available?

Commissioner Gilstrap: answer is yes, we will have a public meeting after our Executive Session and will be taking additional comments.

Ben Green: resides in Phoenix, AZ and is a local attorney. First of all, what we are all concerned about is obvious, when are this year's draw results going to be released? How likely is it that the motion that was filed to lift the injunction will be granted? And that is based upon a couple of questions I have from a legal perspective. Were the arguments used that the draw was in fact completed before the court ruling came down? I think that is an important issue and if that was not made, can that be amended and also, were the arguments that other nonresidents are also being affected by this? Now, no one wants to give up our tags to nonresidents. However, many of us I'm sure have hunted in other states and know that we have been forced to go to other states sometimes because it's not likely that we are going to be drawn in this state either. I want to know if the argument was made for persuasiveness whether nonresidents are also being affected by this one person's interest in his own monetary gain? I would like to know if it is at all possible that the motion that was filed be released to the public so we can read that and see what the options are so can get draw results released this year. My second question applies to the appeal to the Supreme Court. I know that several organizations do regularly file briefs to support our positions, but was an expert there for the constitutional arena, and is one being considered? I think that all of us would gladly agree to support that through some kind of fee to hire an expert. They are very complicated. They use the commerce clause for virtually everything to get laws passed. The commerce clause has been just broken open to where you can get anything through that. That is an easy source and if you have a constitutional expert, sometimes those things can help in determining how good of a chance we have to limit nonresidents or put restrictions in. I would just like to say that I agree with the Elk Society representative previously on most of his points, but I would just like to know whether or not we are getting help from other organizations?

Mr. Odenkirk: regarding the availability of the motion, it has been filed, I have a copy here and copies can be made available, and you can review the arguments that were made. You referred to an issue about whether the draw was completed and whether or not that was factored into the motion? We felt as if the draw had been completed, and we were now no longer subject to the injunction, then we would not have filed for any relief from the injunction. The concern though is that what the court did is it prohibited our enforcement of the regulation. What the regulation says is that we can't issue permits with 10% cap, we had not issued permits at this point. We have not completed the process of issuing those permits so there is no question as to whether or not that injunction applies. I don't think the Commission wants to be held in contempt by just ignoring the fact that the permits have not been issued at this point. On the second point about the use of a constitutional expert, throughout this litigation, from the very beginning and especially on the petition served before the United States Supreme Court, we did have legal experts in this field assist in reviewing our own documents. People who have worked on commerce clause issues for 30 years. In fact, we had the lawyer who argued the Supreme Court case of *Montana v. Baldwin*, which is essentially the case that we relied on throughout this litigation to support our arguments. So we did have experts assist us throughout this process and will continue to do so in the future.

Michael Althoff: resides in Chandler, AZ. I would venture to say that one of the reasons that these guys filed this suit is because I think that the 9th Circuit Court has a reputation as pretty wacky decisions compared to some of the other circuit courts in the country. Although I have heard some pretty good suggestions here today, I think that a lot of those would still fall prey to interpretation under the commerce clauses. The other thing that concerns me too is that with this decision, it seems to me that it is just one step away from even being able to charge nonresidents more than residents. I don't know if anybody has looked at that, but that's a pretty fine line in my mind and I don't think that there is too much of a difference between the two factors. If they can get this passed, then what's to stop them from saying you are just as discriminatory by charging nonresidents more. Is that reasonable?

Mr. Odenkirk replied that comments are not unreasonable. We do have a concern as we said earlier the case that has already been filed by the state of Minnesota is raising that precise issue of the disparity between the two fees. However, there is stronger Supreme Court precedent in this area that has upheld the ability of states to charge different fees between resident and nonresident. Given that we do have a Supreme Court case that is essentially on this point, granted it is a number of years old and we have different members on the court who might look at it differently, we feel much more confident that we can protect the ability to charge residents a different fee.

Kevin Wheeler: resides in Tempe, AZ. When I found out about this ruling, I went on the Internet and pulled down the 9th Circuit Court ruling. I briefly consulted with an attorney. It seems to be the whole decision is based on judge's interpretation of the commerce clause. My question to that is where is the data on what is the impact to interstate commerce here? Is it really substantial? What is substantial? How many dollars are we talking about here? It seems this vague interpretation can be used for any possible reason. What I would like to see us do is go after the appeal process, using the Supreme Court. I realize they only take a small percentage of cases that are thrown their way. What can I as a citizen do? What can the rest of the guys do? What can we do to help support this process? Can we put together a defense fund? Is there anything other we can do besides sit back and wait?

Commissioner Gilstrap: answer is yes.

Luigi Baratts: resides in Phoenix, AZ. I just have a couple of questions. You said that the next state, the State of Nevada, might be next for being sued or all the states in the 9th Circuit? Are we contacting other states? Are they helping us? Are they sending letters to the judge?

Director Shroufe: Jim because he has been communicating for the last three years with other western states attorneys. I have been communicating with their directors and this decision as we indicated. It just doesn't have ramifications in Arizona. Whether other states are going to face similar lawsuits, which we have indications they are, or whether they are going to have to change their rules before they get sued and the precedent has been set, I don't know, but, yes it's coming. Not only here in the 9th Circuit, but I am sure it's going to spread far eastward from here.

Mr. Baratts: what are the qualifications for becoming an outfitter? Do you pay a fee, then you are an outfitter? Are there any restrictions? Are there any restrictions that the Department can make to say, hey you have to be recognized by the Department in good standing? And, if there is, we just won't let USO come in Arizona.

Mr. Odenkirk: the issue of regulating outfitters is an even more difficult one than regulating nonresidents. To prohibit nonresident or out of state outfitters from operating in Arizona would be clearly unconstitutional. There are cases from Arizona that have already said that.

Mr. Baratts: what are the qualifications for becoming an outfitter, especially a nonresident outfitter? Obviously you have to apply, you have to have a license, is there a class, is there restrictions that the State of Arizona has to protect hunters like us from being shot by nonresident hunters? Is there some kind of format for being an outfitter?

Mr. Odenkirk: we regulate guides in Arizona, but at this point do not regulate outfitters.

Mr. Baratts: so we can in the future do that?

Mr. Odenkirk: it is something that the Department is looking at 1) whether or not it has the authority to regulate the guiding business, and 2) what will it take to implement a process of regulating outfitters in Arizona.

Commissioner Gilstrap announced that when we go into Executive Session, Dana Yost has provided for cold water and ice, so you will be able to survive outside in the heat. Please make that available to yourself when we do take a break.

Warren Ruppert: resides in Goodyear, AZ. Two quick things, first of all, I have to concur with some of the gentlemen, just as a reminder which has already been brought up, there are a number of nonresident hunters that put in for this state. A couple of them are family and friends that come back because they grew up here and it is part of the family heritage. They pay the extra fee, they put in, they get drawn, and when they can, they come back and hunt. They do so because they love it here and because they were raised here. I can see very easily how if you jack the fee up, then those kind of people wouldn't be able to come, but a USO customer who can afford the \$2-3000 simply to apply through them, plus their fee, probably would not have a problem with that. Just a comment. Second, right now there is obviously a discrepancy between the fees that a resident pays for an elk tag, and the fees a nonresident pays. How is that cost difference computed? Is it based solely on state revenue disparities, what Game and Fish would get and not get from a resident or nonresident. I am just curious how that figures.

Commissioner Gilstrap: it is based primarily on a traditional formula and would take legislation to change that figure from one amount to another.

Mr. Ruppert: but it is based somehow or another on revenue issues to Game and Fish?

Commissioner Gilstrap: it's based on a traditional formula. When increase resident by x percent, you increase the nonresident also by similar percentage so it has kind of evolved as a formula. That doesn't mean it has to be that way, but that's the way it has been.

Director Shroufe: Hays is correct, the rule has generally been 5 times the residents fee. That's based on a lot of tradition, but also based on that thin line that Mr. Odenkirk just mentioned of reasonableness. We don't know when we overstep that line until we are told by a court that we have. That's being tested as Mr. Odenkirk indicated in Minnesota and North Dakota right now. So we are all watching that because who knows which way it could be. It could be that yes we can set higher prices for nonresidents or maybe have to come back down. That's what is

concerning about all these court cases, they are not only setting precedent in the state that they are being tried in, they are going to have ramifications all over the United States.

Commissioner Gilstrap asked other Commissioners if they had any comments or observations. You are awfully quiet out there.

Darla Solomon: resides in Glendale, AZ. Third generation Arizona native. Represent Outdoors Arizona. I have a couple of questions that are big concerns about the fact that it was admitted that the draw was complete, does that mean due to this new ruling that we are going to have to redo whole application process? Do we also have to do a media blitz to notify out of state residents that now there is not a 10% cap in our state? Are we going to be held to that by the court to let the public know to get the information out that all the rules have changed?

Director Shroufe: as we've indicated to other speakers, there are restricted options that we have because of the ruling, but until the Commission decides which option they are going with, it would be premature at this time to say; hopefully at the end of the Executive Session we can come back and talk about that. There are options we will discuss in that Executive Session today.

Ms. Solomon: was wondering if that was a mandate by the court that we were going to have to re-notify people and put out a public notice to say that the rules have changed in Arizona.

Mr. Odenkirk: the application is not an issue, what the court has said is that we cannot issue permits with a 10% cap. So, it wouldn't affect the fact that we have applications already in place, it would affect how we select applicants for permits. The first draw that was done, had 10% cap in place. The question is do we have to redo that draw without the 10% cap? That's one of the things we are going to have to talk to the Commission about. But in terms of having to disregard all the applications and start all over, that's not what is required.

Ms. Solomon: she has seen a lot of out of state people that maybe didn't put in because they knew Arizona had a 10% cap. So, do we get ourselves in more legal trouble from not taking care of that?

Mr. Odenkirk: he doesn't believe that is the case.

Ms. Solomon: next part is, I want you to look at support you have here today, and all these people. If we had known that we were so close to losing what we have here in Arizona, protecting our resident hunters rights, if we would have had any sort of information that this wasn't going the way that we all thought, we would have been there to help you with letters, coming to meetings, etc. I despair at the fact that I am standing here today and the judgment has already been made. That we were not able to come support you better.

Michael Rounds: resides in Glendale, AZ. One of his questions is if everyone knew that this thing was filed back in January, why didn't the Department put in 24 hours a day once draw ended to get it done as quickly as possible before the order was issued saying you can't do that? If everyone had volunteered, look this is coming down, the judge is going to make decision, it might go our way, it might not go our way, why didn't we have everyone just come together, get it done, get it over with so they can't say you have to stop it now?

Commissioner Gilstrap: there was no delay in the draw. There was no way to predict this timing, as mentioned before, this could have come down four months ago, or four months from now. There was no way to know exactly when it would, and there was no delay. The draw was expedited as quickly as it could be.

Mr. Rounds: I understand there was no delay, but it could very easily have been done a lot quicker, getting more people on to it because they knew, Game and Fish, Attorney General, they knew that they had submitted that order to imply that.

Commissioner Gilstrap: we as individuals could have expedited it any, because it's a mechanical process and software process. Mr. Rounds said couldn't Game and Fish have said to Nevada look, we need to get this done very quickly because we are outsourcing for them to do our draw results. We are only ones that do it in May, other states do it 2-3 months earlier. But at time we did our draw deadline, we were the only ones in there that had a drawing to go that route. Is that correct?

Director Shroufe: we conduct our draw, we have always conducted our draw, but the people in Nevada were just aiding in the application process. We have always done the draw the same way in Arizona Game and Fish.

Mr. Rounds: second question is, it's north of the Colorado River. If you have to redo the whole draw, how are you going to be able to only redo units north of it and keep everything else the same? A lot of the hunters know the Flagstaff area, Mormon Lake, know that area. Not too many hunters put in for up there. The majority of them are in that area. Are you going to be able to only stop from the Colorado River north, and leave everything from the Colorado River south and leave that as is?

Director Shroufe: we are going to discuss that in next hour or so. When the Commission decides what they can do, we will have that answer.

Commissioner Melton: My question could be as the devil's advocate, if we would have already had the draw, these permits that went out in the mail and the judge had ruled that these were null and void, would we have to retrieve all those from people that had already gotten them, and go back through the process, what we would have done then, would already have been illegal and we would have to retrace our steps. Is that a correct assumption?

Mr. Odenkirk: the judge's order probably was only valid from the date of the order forward and would not have affected things that occurred prior to the order. So, had the Department issued the permits and mailed them out, then the judge's order would be in effect next year, not this year.

Commissioner Melton: we could really have had a lot worse situation than being stopped right at this particular moment before any of the mailings went out.

Commissioner Gilstrap: as I interpreted that would be no, it would have had an affect on the next draw, not the draw that just went out.

Dennis Slade: resides in Mesa, AZ. I have questions in two areas. First, was this ruling foreseeable?

Director Shroufe: as indicated before, we had filed our motions in January and we did not know when it was going to come down and we did not know what the answer was going to be. Mr. Slade, I realize that, but knowing the 9th Circuit Court, which we have been fighting with all along and our track record with it, and the fact that we had already run into a wall against it, was not the ruling foreseeable? Not when it came down, but the fact that the cap would be unconstitutional.

Mr. Odenkirk: yes, that's correct. The ruling was foreseeable, the outcome was foreseeable, and the public and the Commission at least the Commission and people close to this issue, were informed of that. But you can't predict the outcome entirely. The actual date as to when the ruling would be made, that was unknown, that was unpredictable. Mr. Slade then asked was this discussed before yesterday? I mean the possibility that this was going to happen? Jim Odenkirk replied that the outcome was discussed before today. One of the problems is that in order to come up with an alternative solution, you just don't do it overnight. You don't replace the 10% cap with some other solution.

Mr. Slade: I realize that, but you got hundreds of thousands of hunters in Arizona that were expecting to log on today and find out that they didn't get tags. Now we don't know when we are going to ever know. Arizona historically is one of the last states to let you know when you are drawn, and you could theoretically only have a couple two or three weeks before you get a tag and the hunt starts. Now we don't even know what the story is going to be. Wasn't there a contingency plan in place?

Commissioner Gilstrap: to answer your question at the last two Commission meetings this topic has been discussed and we have had input from the public both specifically and generally on alternatives and we have given direction to the Department to seek alternatives, should this cap go away or should it not. What are some of the other potential alternatives. So, it has been discussed. But even if it hadn't been, we would still have to have this Commission meeting and we would still be in this box because until that decision was made, if it had been positive to us, we wouldn't have had to have meeting. Since it was made, we have no alternative.

Mr. Slade: at the time you had your Commission meeting in April, when you set this whole thing, could you not have had the alternative plan in place and done two draws or whatever, so that we wouldn't be in this quandary that we are in today? It seems like that is mismanagement there and the whole state of Arizona is suffering for it. The phone calls that I got this morning were very disturbing and they all wanted to know who was going to get fired over this whole thing and I think that is a good question. Here we are all hung out to dry, we don't know what's going to happen, and this could have been averted if you had already voted and had a meeting and had a contingency plan in place, you would have just automatically implemented it. It looks pretty obvious that we are going to lose our cap for the time being until we get some kind of case in front of the Supreme Court that they are willing to hear on this commerce clause. No point in debating anymore. My other question would be for you and the rest of the Commissioners, would you support raising our deer tags north of the Colorado river, and our bull elk tags to a price that is commiserate with our neighboring states? For example, Utah, they charge a different amount for their better deer tags, New Mexico charges an exorbitant rate for the bull elk tags in their better units. Is the Commission willing to look at that now and at least elevate the price of those tags for nonresidents?

Commissioner Gilstrap: I think that is one of the alternatives that we are going to be working through. And if looking for someone to terminate, I would suggest the 9th Circuit.

Mr. Slade: I came straight from the federal court over to here. I am a police officer and a Federal Law Enforcement Agent. Believe me, I have had it with the 9th Circuit Court and I know what you guys are going through. Most people don't. In lieu of that, I would guess that we are not going to get a lot of relief from them, so we are probably going to have to come up with a plan to get around that. Thank you.

Thomas Slaughter: resides in Tempe, AZ. Commercial aspect of this or the commerce seems to be our stumbling block. My thought would be if we really make hunting a recreational activity and issue licenses for that purpose only, non-commercial recreational use, and we issue tags on same basis, not for commercial use, but strictly noncommercial and bar sale of any animal parts, would that give us any relief from injunction?

Mr. Odenkirk: to answer your question, no we are not getting any relief from the injunction today. The sale of parts is one aspect that the 9th Circuit Court cites as the reason why our regulation impacts commerce. There was an alternative reason and that is the fact that people travel from other states to come hunt in Arizona, and the simple fact that people move across state lines to hunt also affects commerce. That is not something we can control.

Mr. Slaughter: from the little reading I did, that was described as an incidental, commercial aspect, but the substantial part was the sale of parts of game as the guide from New Mexico was talking about. He makes his living selling the parts of the animal and he is not talking about the gasoline or motel bills, he's talking about parts of the animal. My understanding is that's the substantial part. The incidental part would be the travel, but you're not the court.

Mr. Odenkirk: if you go back and read the 9th Circuit opinion, it first cited the movement of people as the basis for concluding that our regulations substantially affect commerce. It also stated alternatively that the fact that we allow for the sale of non-edible parts is another reason and that combined, for those two reasons, the court found that our regulation affects commerce.

Kevin Decker: resides in Mesa, AZ and represents Arizona Sportsmen. Obviously, it is all about this 10% cap. Can't we just make it 11%, add a couple more tags, still be within the law and just get through this year and then we can hire some attorneys that have helped the other states? As long as we are not breaking the law, why can't we just make it 11%? I would be willing to donate my tag to an out of stater just to get this process going (like I got drawn this year).

Commissioner Gilstrap: I don't think we can finesse this. I think we have to deal with something that's real. I don't think we can finesse the court by changing the number one digit and say it wasn't 10, it was 11.

Mr. Decker: it wouldn't be breaking the law would it?

Commissioner Gilstrap: I'm just not sure it's that simplistic.

Ben Hightower: resides in Gilbert, AZ and represents Bear Mountain Inc. Could you tell us what options you are considering in the next hour? Because I haven't heard anybody say anything about what direction you are going to discuss.

Director Shroufe: the reason we did it this way is because it is hot outside and it would not have been right to turn you all out without having said your piece. Some of you are going to have to leave, so we thought we would take public input and the people that can stay around will wait until the outcome. Some of these issues are legal matters with the Commission and we have to discuss in Executive Session, so as we've been telling the rest of the public, we are not trying to be evasive, we're just trying to make sure that the Commission knows what its options are. The decision has to be made in public. So that discussion has to occur here. The Commission right now is not aware of the legal ramifications of some of the options that will be discussed and we have to do that in Executive Session.

Mr. Hightower: one other point. It is my understanding that approximately 15% of the total applications for elk hunts in Arizona this year were from nonresidents? Is that correct, or close?

Director Shroufe: indicated he would have to ask our staff. I don't know if we have run those figures.

Deputy Director Ferrell: they don't have figures right now, but can get information to you.

Mr. Hightower: would it be possible to take the algorithm out that limits the draw to the 10% cap, reshuffle, redraw, and then issue additional special tags to those Arizona residents who got bumped because of the second draw?

Director Shroufe: those are some options that we are going to be discussing. I think the only impossibilities are those that are going to be outside the legal ramifications.

Mr. Hightower: so there is no clear understanding if that is a possibility or not?

Director Shroufe: again we are not trying to be evasive, but we are going to have to meet in Executive Session so the Commission knows the legal ramifications of options. There is a way to get through the injunction and we want the Commission to consider that.

Commissioner Gilstrap: just like you, we heard about this a couple of days ago and the Commission has to work within the sideboards of that decision. We have not had a discussion with each other yet and need counsel about all the sideboards and parameters during Executive Session. We will then will come back into open session and there will be no decision made in Executive Session. Whatever the decision is and the discussion of a litany of options will be made in public session, just as we are right now.

Michael Rounds: speaking again. I would like to just make a couple more comments. Is there a way, because the order said north of the Colorado River, is there a way everything south of Colorado river to go ahead and post those and issue those? And then do a redraw on just those selected units? That everyone who didn't get drawn can go ahead reapply for those and go that route? Is that an option that can be done? One that will increase the Arizona residents who didn't get drawn for a second chance on getting a potential trophy tag that everyone is wanting to go after. Is there a way for that to happen?

Commissioner Gilstrap: again, that can be one of the options. I think the concept that you are saying is certainly a concept that will be discussed; but you are dealing only with deer. There are elk tags south of Colorado River. There are primo elk hunts that are included in this injunction.

Allen Taylor: resides in Mesa, AZ and represents ADA. One concept that I thought about was the Hunter bonus pool – have they taken the calculations of the available tags for nonresidents in the hunter bonus pool and would it help us as residents showing that there is actually more tags available than the 10% cap. That is a concept I thought you should probably discuss and maybe also there is some loophole that AGFD can do with the hunter bonus pool that does not have a cap on it. I am not sure the 9th Circuit or whichever court ruled in this, looked at the Game Department's position as it relates to those tags that are not earmarked just for residents, so you actually are not at a 10% cap, and it is open for nonresidents and it's not part of the normal draw process.

Commissioner Gilstrap: it could be less than that.

Commissioner Gilstrap asked if the members of Commission had any comments or thoughts?

Motion: Commissioner Golightly moved and Commissioner Melton seconded THAT WE GO INTO EXECUTIVE SESSION.

Vote: Unanimous

Commissioner Gilstrap told public that the Commission will be going into Executive Session for a period of time. We will try to make it as brief as possible, but you can imagine that it will take a few minutes. Please bear with us and we hope to see one and all of you as soon as we can.

Meeting recessed at 1:59 p.m.

1. Executive Session

- a. Legal Counsel. The Commission may vote to meet in Executive Session in accordance with A.R.S. § 38-431.03 (A)(3) & (4) for the purpose of discussing and consulting with legal counsel in order to consider its position and to instruct legal counsel regarding the Commission's position on the July 13, 2004, U.S. District Court Order in *Montoya v. Manning*, CIV98-0239 PHX RCB. The Commission may decide the matter in the public meeting or defer a decision to a later date.

Reconvened at 2:44 p.m.

2. Discussion of Options to Process Applications that are Affected by R12-4-114(E) to Comply with the July 13, 2004, U.S. District Court Order in the Matter of *Montoya v. Manning*, CIV98-0239 PHX RCB.

Presenter: Steve K. Ferrell, Deputy Director.

The Commission will discuss options to process applications that are affected by R12-4-114(E) to comply with the July 13, 2004, U.S. District Court Order in the matter of *Montoya v.*

Manning, CIV98-0239 PHX RCB. The Commission may vote to provide the Department with direction on this matter.

Chairman Chilton announced that for the public session the Vice Chairman will act as Chairman. Commissioner Gilstrap announced that for members of the Commission who were not here physically, we had very little mortality. We have some hot bodies in here, and I mean that literally and figuratively, I would say that our ranks are reduced by a trivial percent. With the Commission's permission to go back into public session, I would state that we had some unusual circumstances evolve during the Executive Session and I would like for Mr. Odenkirk to speak to that.

Mr. Odenkirk stated that there is a bit of good news and bad news with what I have to say. The good news is that we did get a call from Judge Broomfield's office wanting to go ahead and set up a conference call on Monday at 10:00 a.m. to discuss our motion for expedited remedy. That's the good news. The bad news is that in light of the fact that the judge may entertain our motion, that the Commission, although they reviewed options in Executive Session, are not in a position to decide or discuss those at this point because of the need to wait to see what direction or clarification we get from the judge on Monday. So, despite the fact that we have spent a considerable amount of time in Executive Session in talking about options and talking about how to proceed, there is very little that the Commission can decide at this point. However, one matter did come up that we can resolve and I will defer to Deputy Director Ferrell to read a recommendation to the Commission.

Deputy Director Ferrell: the Department recommends that the Commission reconvene at noon on Monday, July 19, 2004 to discuss the results of the teleconference between Department Counsel, plaintiff's counsel and the court, and then direct the Department on how to proceed in administering the 2004 draw for deer and elk. Further, the Department recommends that the Commission direct the Department to disclose the results of the draw for bighorn sheep, antelope, buffalo, and turkey by the close of business on Tuesday, July 20, 2004.

Motion: McLean moved and Melton seconded THAT THE DEPARTMENT RECOMMENDATION BE APPROVED.

Is there any discussion?

Commissioner McLean has a couple of comments. I don't know what my draw results are anymore than any of you sitting down there in that hot building, know what yours are. I want to know what mine are, I have deer, elk and sheep permits pending. What we have done is give absolutely the most that we can today and guess maybe we are asking you to take that with a little bit of faith and see what judge does Monday. Hopefully, by no later than Tuesday we will get everything to you that we can. And then by Monday afternoon hopefully we will be able to make a decision on deer and elk. Believe me, this is as tough a decision for us as it is for you guys sitting down there and waiting to find out what is going on with regard to the folks like the Bear Mountain folks. We're trying to get you some results so you can start selling arrows and broadheads as soon as you can.

Vote: Unanimous

Commissioner Gilstrap will turn the meeting over to Director Shroufe, but first in addition to that, just so that we are completely clear and you can reiterate Mr. Director, as a result of our Assistant Attorney General's office receiving a call during Executive Session regarding a conference call on 10:00 a.m. on Monday, we don't know what will happen. This is what we asked for as far as communication, but we do not know what that decision will be and, therefore, we can't make an intelligent decision with all of the ramifications until after we hear the judge's thoughts on Monday morning. We will have a Commission meeting at noon on Monday.

Director Shroufe advised that this concludes today's agenda and we do have a consensus from the Commission that we will have a meeting at noon Monday that will be a publicly noticed meeting and I assume we can have it here at the wildlife building and anyone who is interested can attend and hear what was decided at the meeting at 10:00 a.m. Madame Chairman, with that, we are done with the agenda.

Chairman Chilton asked Director Shroufe to thank the public for us for their patience on such a hot day.

Commissioner Gilstrap asked if there were any other comments from the public that they want to get on record? We can do so. If not, we will look forward to seeing one and all Monday afternoon.

Voice from the Crowd: Could you state one more time for clarification what the judge is going to decide on Monday?

Commissioner Gilstrap: no, all that I can say is there is a conference call with the judge and our Attorney General's representative. What he is going to decide, no, I cannot say.

Mr. Odenkirk: what we have asked the court to do is to lift the injunction. The injunction is preventing us from completing the draw. If the judge grants our relief, then we can complete the draw as we started. But there is no guarantee what the judge will do. He may do something different than what we asked.

Michael Rounds: Obviously, we know what the judge is going to do, he is either going to grant it or deny it, do we have a backup plan? You guys have obviously discussed the options, what is it going to be? If they say no, you have to put them all in, is it going to be a redraw or what's going to happen?

Commissioner Gilstrap: that is why we are going to reconvene our Commission meeting at noon on Monday. What we discussed in Executive Session was the parameters and the sideboards from a legal standpoint. We will make whatever recommendation, just as we would have here, in public session, after we get input from the judge and the court. We do not know what will happen until the judge makes his conference call decision with our Assistant Attorney General.

Michael Altoff: Could you clarify what will be announced on Tuesday? Did I understand you right that we won't know the results of the deer tag draw north of the Colorado River and the elk tags, but the others will be announced Tuesday, is that what I heard?

Commissioner Gilstrap: correct.

Chuck Eckert: Thanked Commission, I know you guys will do the right thing and I know you are looking out for our best interests. Thanked audience for attending. I have been to Commission meetings and I would like to see a quarter of what I see here today.

Commissioner Gilstrap: I think every member of the Commission would totally agree with that. The commitment and the passion that has been displayed today is wonderful. We do invite you to come to the general meetings as well as the special, critical crisis meetings.

Mr. Eckert: you know as well as I do that we are being outnumbered by the anti groups at these Commission meetings. Anyone can log onto your website and get the dates for the meetings. I would encourage everybody to do so.

Alan Taylor: have a couple of questions. Did I hear correctly that even though the draw is done, we can't set a precedent, i.e., the draw was done before his ruling – is that correct?

Mr. Odenkirk: the draw was completed by the computer processing, but no permits were issued. We got the injunction before any permits were issued. Alan Taylor: so even though the draw was complete, because of the injunction we cannot issue tags that were complete before?

Mr. Odenkirk: correct.

Mr. Taylor: am I right to understand that the cap in his injunction it mentions that it would be discrimination to have any cap for nonresidents? Is that correct?

Mr. Odenkirk: the order did not go beyond that. It just said that the existing regulation is unconstitutional. Any other form of discrimination would be reviewed with strict scrutiny.

Mr. Taylor: so if we put a 50% allotment next year, for example, for nonresidents, that could still be considered discrimination? Is that correct?

Mr. Odenkirk: I am not sure that is discriminatory, 50-50.

Mr. Taylor: but it's going to be a wide open draw is what I am fearful of in the future, equal rights for myself as a resident versus nonresidents. I am concerned about that and right now we don't know if that's the case.

Mr. Odenkirk: we are looking for alternatives that are not unconstitutional, that still provide some protection for resident hunters.

Mr. Taylor: may I ask that if you are considering the raising of tag fees for nonresidents to make prohibitive for those people to come in as an alternative?

Commissioner Gilstrap: we have a litany of alternatives, both formal and informal, that have been discussed at last several Commission meetings. We will be seeking public input to those in making that kind of a decision.

Mr. Odenkirk: we publicly discussed that as an alternative at the last Commission meeting.

Mr. Taylor: are you going to discuss the raising of fees to minimize tags from out of state?

Commissioner Gilstrap, yes, that is one of the several alternatives.

Mr. Taylor: I am assuming you have an agenda that you are going to discuss Monday at 10:00 a.m. with Judge Bloomfield.

Mr. Odenkirk: the judge will set the agenda for the conference call.

Mr. Taylor: why should that be, since the judge would be setting the agenda for future management practices?

Mr. Odenkirk: no, no, the judge is setting the agenda for the conference call that he has scheduled.

Mr. Taylor: will we know the agenda?

Mr. Odenkirk: no this is not a public meeting, it's a court proceeding that he has set by conference call.

Mr. Taylor: so we will leave here not knowing what's going to go on Monday in terms of the agenda?

Mr. Odenkirk: the terms of the Commission agenda?

Mr. Taylor: in terms of what's going to be discussed as a potential solution to what we perceive as hunters a problem.

Mr. Odenkirk: yes, that will be discussed in the Commission meeting after the court hearing.

Dennis Cash: I spoke earlier. I would just like to get on record the frustration that we as hunters feel at this point. We are being, as a state, held up by an act of this judge. Do we have no recourse in this case? Or is it just the Supreme Court? Is that our only recourse at this point?

Mr. Odenkirk, there are opportunities for the appeal of any decision to the Supreme Court, eventually.

Mr. Cash: so essentially we as hunters or as a state have to accept the decision of this one, act, of this judge in the Circuit Court system and do as he says or we are essentially in contempt of court or whatever he decides. Is that correct?

Chairman Chilton: reiterated that we are frustrated as we can possibly be, but the Arizona District Court sided with the Commission and with the hunters of Arizona, but when it was appealed to the 9th Circuit Court, that's when we lost. And then the 9th Circuit Court directed the judge and ordered the judge to follow their findings. We would not be able to say that it was an activist judge in Arizona, you could describe the 9th Circuit as having come to a conclusion that you regard as not necessarily keeping with your perspective. But the Arizona judge, the District Court judge, is obligated by law to follow the mandate of the 9th Circuit. So, we wouldn't want to blame him.

Mr. Cash: well I guess my point is we are being essentially held at bay by an activist court, if you will, that is legislating from the bench and subverting our regulations, is that correct?

Commissioner Gilstrap: what we have is a case that we pled one way to protect the Arizona hunter and we lost. Now we are trying to either have a stay on that decision or come up with a formula, a process, that will least negatively effect our hunters and wildlife.

Mr. Cash: my problem with that is we have perhaps the Game and Fish Department can tell us how many hunters applied for tags in this state. I assume it is in excess of 250,000 applications. The will of 250,000 people is being basically ignored. And, we have no recourse. I don't know the right questions to ask, I don't know how to express anger, I don't know the right questions to ask, how do we stop this? You're the lawyer, you tell me.

Mr. Odenkirk: I think the fact that you talk about the numbers of people who are affected by this, and what you need to keep in mind is that the role of the court is sometimes there to protect the interests of those who are not the majority. Just because we have the numbers on our side doesn't mean that is the way the court is going to decide.

Mr. Cash: once again, I believe we've got balance of power that is supposed to stop that sort of thing, but I digress. I appreciate your efforts today.

Commissioner Gilstrap: I would suggest you send whatever karma is available to the judge to make a good decision.

William Faulkner: if this judge says we have to redraw, how long is it going to take before we get the results back?

Director Shroufe: again, it would depend on the ruling from the court and the option that the Commission will pick as to what the time deadline is. When they make a decision in public session as to the direction we are going to go, the Department is going to be ready to talk about timelines and dates, but we can't do that right now.

Chris Hasty: I am a volunteer hunter ed instructor for AGFD. One of the questions that I have, or maybe I'm asking for the Commission to possibly consider, is where our local residents could get an upper hand on is if the Commission would vote to abolish any bonus points for out of state hunters. That would give us a little bit of a break.

Commissioner Gilstrap: would any members of the Commission like to make any comments or take this opportunity to thank the members of the public, the hunters who have been here today?

Commissioner Melton: I really appreciate all the guys showing up, because this is very frustrating for the Commission as well as the membership. We are all hunters to and we all got our tags in. This is a tough decision we are going to have to deal with, but we have got some options, and, hopefully, our best option is if the judge issues a stay to where we can continue with what we are doing without any other obstructions. I really do appreciate all of you coming. I had quite a bit of conversation with quite a few people down our way that are very upset. I hear a lot of frustration wherever I go on this issue. We are very frustrated ourselves, but we are trying to look out for your best interests in this whole process and I think the decision that we come out with will be on track in that direction.

Commissioner Golightly: ask Kevin Harris to call him.

Director Shroufe asked if there was anything more?

Chairman Chilton: no, not to my knowledge. Hays, anything there that you see?

Commissioner Gilstrap: no, I think we can stand adjourned until noon on Monday.

Chairman Chilton: sounds good to me. We will receive a fax about the call in numbers and all of that.

Director Shroufe: yes you will. Before you adjourn, I would like to try to clarify something. The Commission has been working on options in public session for the last couple of months and we will do so again in August as to the different remedies to this situation. That's a different issue right now than the stay that we have. Those remedies that we come up with and the Commission directs us to do, may be options to this 10 percent cap decision. They may address it in a positive way. I don't want the audience to leave here thinking that the Commission or Department has been doing nothing on this thing for the last two years because we have. In fact, Madame Chairman and Mr. Vice Chairman have indicated that we have in public session talked about some of these options. It's again on the agenda for the August Commission meeting and the Commission will be further exploring these options, so I don't want you to get the two confused. I think there is a little confusion out there right now. I would appreciate you thinking about that and know that the Commission is trying to look at long term solutions to this issue.

Commissioner Gilstrap announced that the same phone number and call in number will be the same as today. So save your notes as will use same call in number and code.

Motion: Chilton moved and McLean seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

Meeting adjourned at 3:10 p.m.

Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

William H. McLean, Member

ATTEST:

Duane L. Shroufe
Secretary and Director